

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION

Case No. 5:24-MJ-01402-BM

The United States of America, by and through the United States Attorney for the Eastern District of North Carolina, hereby moves this Honorable Court for an Order dismissing Count One in the above-captioned case with prejudice.

FACTUAL BACKGROUND

On March 27, 2024, the United States filed a one count Criminal Information in the above-captioned case with this Court. Count One charged that the Defendant did operate a motor vehicle upon a street, highway, or public vehicular area while under the influence of an impairing substance and/or after having consumed sufficient alcohol that he had, at a relevant time after driving, a blood alcohol concentration of 0.08% or more, in violation of Title 18, United States Code, Section 13, assimilating North Carolina General Statute 20-138.1.

The charges in the Criminal Information arose from a March 18, 2024, incident in which Department of the Army Security Guard Bryant observed the Defendant operating a 2022 Ram 1500 as Defendant approached Access Control Point 5 (All-American Gate). Once Defendant stopped at the gate, Guard Bryant

detected an odor of alcohol emitting from Defendant's person. Guard Bryant notified the Fort Liberty Law Enforcement Center, which dispatch Officer Nelson. Officer Nelson responded and also detected an odor of alcohol emitting from Defendant's person. Officer Nelson conducted Standardized Field Sobriety Tests revealing six out of six clues on the horizontal gaze nystagmus test, one out of eight clues on the walk and turn test, and zero out of four clues on the one leg stand test. Defendant was apprehended and taken to the Fort Liberty Law Enforcement Center where a chemical analysis of his breath by an EC/IR II instrument revealed his alcohol concentration to be .12.

During a proceeding under Article 15 of the Uniform Code of Military Justice (UCMJ) on April 8, 2024, Defendant's Commanding Officer imposed punishment upon Defendant for violating Article 113 of the UCMJ, Title 10 United States Code Section 913 based on the evidence described above. Defendant's commander reduced Defendant's rank and paygrade from Master at Arms Petty Officer Second Class (E5) to Master at Arms Petty Officer Third Class (E4) and ordered forfeiture of \$202.62 pay for two months.

Defense counsel was consulted prior to filing this motion. Defense raised no objections.

ARGUMENT

Rule 48(a), Federal Rules of Criminal Procedure, provides that "The government may, with leave of court, dismiss an indictment, information, or complaint." In the present case, the Court should grant the government's request

for dismissal with prejudice, because a dismissal in this case would not be clearly contrary to manifest public interest, as the government's motion to dismiss is not made in bad faith. *See United States v. Goodson*, 204 F.3d 508, 512 (4th Cir. 2000). The Defendant has received punishment that is equal to or greater than that which he was likely to receive if found guilty by this Honorable Court of the charged offenses. The interests of justice are best served by dismissing the single-count information to prevent duplicative punishment for the same acts of misconduct. Furthermore, the Defendant has not been prejudiced by unnecessary delay.

CONCLUSION

For the foregoing reasons, the United States respectfully moves the Court for an Order dismissing Count One of the Criminal Information in the above-referenced case with prejudice.

Respectfully submitted this 9th day of April, 2024.

MICHAEL F. EASLEY, JR.
United States Attorney

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CERTIFICATE OF SERVICE

This is to certify that I have this 9th day of April, 2024, served a copy of the foregoing Government's Notice of Substitution of Counsel upon the defendant by electronically filing the foregoing with the Clerk of Court, using the CM/ECF system which will send notification of such filing to:

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